

## § 1021.101

U.S.C. 4332(2)) and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). This part supplements, and is to be used in conjunction with, the CEQ Regulations.

### § 1021.101 Policy.

It is DOE's policy to follow the letter and spirit of NEPA; comply fully with the CEQ Regulations; and apply the NEPA review process early in the planning stages for DOE proposals.

### § 1021.102 Applicability.

(a) This part applies to all organizational elements of DOE except the Federal Energy Regulatory Commission.

(b) This part applies to any DOE action affecting the quality of the environment of the United States, its territories or possessions. DOE actions having environmental effects outside the United States, its territories or possessions are subject to the provisions of Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions" (3 CFR, 1979 Comp., p. 356; 44 FR 1957, January 4, 1979), DOE guidelines implementing that Executive Order (46 FR 1007, January 5, 1981), and the Department of State's "Unified Procedures Applicable to Major Federal Actions Relating to Nuclear Activities Subject to Executive Order 12114" (44 FR 65560, November 13, 1979).

### § 1021.103 Adoption of CEQ NEPA regulations.

DOE adopts the regulations for implementing NEPA published by CEQ at 40 CFR parts 1500 through 1508.

### § 1021.104 Definitions.

(a) The definitions set forth in 40 CFR part 1508 are referenced and used in this part.

(b) In addition to the terms defined in 40 CFR part 1508, the following definitions apply to this part:

*Action* means a project, program, plan, or policy, as discussed at 40 CFR 1508.18, that is subject to DOE's control and responsibility. Not included within this definition are purely ministerial actions with regard to which DOE has no discretion. For example, ministerial actions to implement congressionally

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mandated funding for actions not proposed by DOE and as to which DOE has no discretion (i.e., statutorily mandated, congressionally initiated "passthroughs").

*Advance NOI* means a formal public notice of DOE's intent to prepare an EIS, which is published in advance of an NOI in order to facilitate public involvement in the NEPA process.

*American Indian tribe* means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska native entity, which is recognized as eligible for the special programs or services provided by the United States because of their status as Indians.

*Categorical exclusion* means a category of actions, as defined at 40 CFR 1508.4 and listed in appendix A or B to subpart D of this part, for which neither an EA nor an EIS is normally required.

*CEQ* means the Council on Environmental Quality as defined at 40 CFR 1508.6.

*CEQ Regulations* means the regulations issued by CEQ (40 CFR parts 1500–1508) to implement the procedural provisions of NEPA.

*CERCLA-excluded petroleum and natural gas products* means petroleum, including crude oil or any fraction thereof, that is not otherwise specifically listed or designated as a hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601.101(14)) and natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or of pipeline quality (or mixtures of natural gas and such synthetic gas).

*Contaminant* means a substance identified within the definition of contaminant in section 101(33) of CERCLA (42 U.S.C. 9601.101(33)).

*Day* means a calendar day.

*DOE* means the U.S. Department of Energy.

*DOE proposal* (or *proposal*) means a proposal, as discussed at 40 CFR 1508.23 (whether initiated by DOE, another Federal agency, or an applicant), for an action, if the proposal requires a DOE decision.

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*EA* means an environmental assessment as defined at 40 CFR 1508.9.

*EIS* means an environmental impact statement as defined at 40 CFR 1508.11, or, unless this part specifically provides otherwise, a Supplemental EIS.

*EPA* means the U.S. Environmental Protection Agency.

*FONSI* means a Finding of No Significant Impact as defined at 40 CFR 1508.13.

*Hazardous substance* means a substance identified within the definition of hazardous substances in section 101(14) of CERCLA (42 U.S.C. 9601.101(14)). Radionuclides are hazardous substances through their listing under section 112 of the Clean Air Act (42 U.S.C. 7412) (40 CFR part 61, subpart H).

*Host state* means a state within whose boundaries DOE proposes an action at an existing facility or construction or operation of a new facility.

*Host tribe* means an American Indian tribe within whose tribal lands DOE proposes an action at an existing facility or construction or operation of a new facility. For purposes of this definition, *tribal lands* means the area of "Indian country," as defined in 18 U.S.C. 1151, that is under the tribe's jurisdiction. That section defines Indian country as:

(i) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(ii) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

*Interim action* means an action concerning a proposal that is the subject of an ongoing EIS and that DOE proposes to take before the ROD is issued, and that is permissible under 40 CFR 1506.1: Limitations on actions during the NEPA process.

*Mitigation Action Plan* means a document that describes the plan for imple-

menting commitments made in a DOE EIS and its associated ROD, or, when appropriate, an EA or FONSI, to mitigate adverse environmental impacts associated with an action.

*NEPA* means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

*NEPA document* means a DOE NOI, EIS, ROD, EA, FONSI, or any other document prepared pursuant to a requirement of NEPA or the CEQ Regulations.

*NEPA review* means the process used to comply with section 102(2) of NEPA.

*NOI* means a Notice of Intent to prepare an EIS as defined at 40 CFR 1508.22.

*Notice of Availability* means a formal notice, published in the FEDERAL REGISTER, that announces the issuance and public availability of a draft or final EIS. The EPA Notice of Availability is the official public notification of an EIS; a DOE Notice of Availability is an optional notice used to provide information to the public.

*Pollutant* means a substance identified within the definition of pollutant in section 101(33) of CERCLA (42 U.S.C. 9601.101(33)).

*Program* means a sequence of connected or related DOE actions or projects as discussed at 40 CFR 1508.18(b)(3) and 1508.25(a).

*Programmatic NEPA document* means a broad-scope EIS or EA that identifies and assesses the environmental impacts of a DOE program; it may also refer to an associated NEPA document, such as an NOI, ROD, or FONSI.

*Project* means a specific DOE undertaking including actions approved by permit or other regulatory decision as well as Federal and federally assisted activities, which may include design, construction, and operation of an individual facility; research, development, demonstration, and testing for a process or product; funding for a facility, process, or product; or similar activities, as discussed at 40 CFR 1508.18(b)(4).

*ROD* means a Record of Decision as described at 40 CFR 1505.2.

*Scoping* means the process described at 40 CFR 1501.7; "public scoping process" refers to that portion of the

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scoping process where the public is invited to participate, as described at 40 CFR 1501.7 (a)(1) and (b)(4).

*Site-wide NEPA document* means a broad-scope EIS or EA that is programmatic in nature and identifies and assesses the individual and cumulative impacts of ongoing and reasonably foreseeable future actions at a DOE site; it may also refer to an associated NEPA document, such as an NOI, ROD, or FONSI.

*Supplement Analysis* means a DOE document used to determine whether a supplemental EIS should be prepared pursuant to 40 CFR 1502.9(c), or to support a decision to prepare a new EIS.

*Supplemental EIS* means an EIS prepared to supplement a prior EIS as provided at 40 CFR 1502.9(c).

*The Secretary* means the Secretary of Energy.

[57 FR 15144, Apr. 24, 1992, as amended at 61 FR 36239, July 9, 1996]

### § 1021.105 Oversight of Agency NEPA activities.

The General Counsel, or his/her designee, is responsible for overall review of DOE NEPA compliance. Further information on DOE's NEPA process and the status of individual NEPA reviews may be obtained upon request from the Office of NEPA Policy and Compliance, GC-20, Office of the General Counsel, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585-0103.

[71 FR 68736, Nov. 28, 2006]

## Subpart B—DOE Decisionmaking

### § 1021.200 DOE planning.

(a) DOE shall provide for adequate and timely NEPA review of DOE proposals, including those for programs, policies, projects, regulations, orders, or legislation, in accordance with 40 CFR 1501.2 and this section. In its planning for each proposal, DOE shall include adequate time and funding for proper NEPA review and for preparation of anticipated NEPA documents.

(b) DOE shall begin its NEPA review as soon as possible after the time that DOE proposes an action or is presented with a proposal.

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(c) DOE shall determine the level of NEPA review required for a proposal in accordance with § 1021.300 and subpart D of this part.

(d) During the development and consideration of a DOE proposal, DOE shall review any relevant planning and decisionmaking documents, whether prepared by DOE or another agency, to determine if the proposal or any of its alternatives are considered in a prior NEPA document. If so, DOE shall consider adopting the existing document, or any pertinent part thereof, in accordance with 40 CFR 1506.3.

### § 1021.210 DOE decisionmaking.

(a) For each DOE proposal, DOE shall coordinate its NEPA review with its decisionmaking. Sections 1021.211 through 1021.214 of this part specify how DOE will coordinate its NEPA review with decision points for certain types of proposals (40 CFR 1505.1(b)).

(b) DOE shall complete its NEPA review for each DOE proposal before making a decision on the proposal (e.g., normally in advance of, and for use in reaching, a decision to proceed with detailed design), except as provided in 40 CFR 1506.1 and §§ 1021.211 and 1021.216 of this part.

(c) During the decisionmaking process for each DOE proposal, DOE shall consider the relevant NEPA documents, public and agency comments (if any) on those documents, and DOE responses to those comments, as part of its consideration of the proposal (40 CFR 1505.1(d)) and shall include such documents, comments, and responses as part of the administrative record (40 CFR 1505.1(c)).

(d) If an EIS or EA is prepared for a DOE proposal, DOE shall consider the alternatives analyzed in that EIS or EA before rendering a decision on that proposal; the decision on the proposal shall be within the range of alternatives analyzed in the EA or EIS (40 CFR 1505.1(e)).

(e) When DOE uses a broad decision (such as one on a policy or program) as a basis for a subsequent narrower decision (such as one on a project or other site-specific proposal), DOE may use tiering (40 CFR 1502.20) and incorporation of material by reference (40 CFR